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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/426,827	10/25/1999	KIMBERLY ANN MUDAR	D-43266-01	2390

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CRYOVAC, INC.
SEALED AIR CORP
P.O. BOX 464
DUNCAN, SC 29334

EXAMINER

HON, SOW FUN

ART UNIT	PAPER NUMBER
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1772

DATE MAILED: 12/31/2001

9

Please find below and/or attached an Office communication concerning this application or proceeding.

A-9-9

Office Action Summary	Application No. 09/426,827	Applicant(s) MUDAR ET AL.	
	Examiner Sow-Fun Hon	Art Unit 1772	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 19 October 2001.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1 and 3-25 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1 and 3-25 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Response to Amendment

Rejections Withdrawn

1. The 35 U.S.C. 112, 2nd paragraph rejection in Paper # 6, paragraph 2 (05/14/01) of claim 15 has been withdrawn due to Applicant's amendment in Paper # 8 (filed 10/19/01).

Rejections Repeated

2. The 35 U.S.C. 103(a) rejection of claims 1-8, 10-11, 14, 16-24 over Ferguson ('403) in view of Oya et al. ('954) for the same reasons previously of record in Paper # 6, paragraph 4 (05/14/01).
3. The 35 U.S.C. 103(a) rejection of claims 1-8, 10-25 over Ferguson ('403) in view of Ferguson et al. ('856) and Oya et al. ('954) for the same reasons previously of record in Paper # 6, paragraph 5 (05/14/01).
4. The 35 U.S.C. 103(a) rejection of claims 1-7, 9, 16 over Ferguson ('403) in view of Wilhoit ('128) and Oya et al. ('954) for the same reasons previously of record in Paper # 6, paragraph 4 (05/14/01).

Response to Arguments

5. Applicant's arguments in Paper # 8 (filed 10/19/01) have been fully considered but they are not persuasive.

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6. Applicant argues that there is no specific disclosure in Oya et al. which teaches or suggests that VLDPE would be a satisfactory substitute for the surprising strength and toughness of LLDPE when used in a patch film. Applicant is respectfully reminded that the higher stretchability and thus shrinkability of VLDPE is well known in the art, such that it would have been obvious to one of ordinary skill in the art to have blended it with the tough LLDPE in order to obtain a patch with higher shrinkability, and that it would be a matter of routine optimization to obtain a film containing the blend with the desired shrinkability. Applicant is respectfully directed to Wilhoit ('128) and Ferguson et al. ('856) as a teaching reference. Applicant is also respectfully reminded that Oya et al. does teach at least one adhesive layer provided between the respective layers, and thus does not rely on the adhesive strength of the VLDPE. Thus the term "seal layer" may also mean seal as in providing some form of barrier as well.

7. Applicant argues that there is no teaching or suggestion in Ferguson et al. ('856) which would allow for a substitution of VLDPE for LLDPE in Ferguson ('403). Applicant is respectfully reminded that Ferguson et al. ('856) does teach that VLDPE has potential as an additive ('856, column 2, lines 60-65) and that it can be shrunk in hot water baths which is very desirable in packaging applications ('856, column 6, lines 49-60 and column 5, lines 1-2). Ferguson et al. ('856) thus provides the teaching of how the improved stretchability of the VLDPE/LLDPE blend of Oya et al. results in the improved shrinkability of the film containing the blend. It would then be mere routine optimization to obtain the desired blend to provide the desired film shrinkability.

8. Applicant notes that Wilhoit is being relied upon for homogeneous ethylene/alpha-olefin copolymer in a rejection of claims other than claims 4 and 9 which expressly recite the

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homogeneous copolymer. Applicant is respectfully reminded that the “comprising” language does not preclude the presence of the homogenous material. The note, however, is proof of Applicant’s thoroughness.

9. Applicant argues that it still remains unpredictable whether VLDPE as disclosed in Wilhoit or Oya et al. will perform comparably with LLDPE in a patch film. Applicant is respectfully reminded that the blending of VLDPE into the LLDPE is to enhance other desired parameters as is well known in the art. Oya et al. does teach better stretchability, and Wilhoit does state that prior art teaches that VLDPE has higher shrinkability, higher tensile strength and greater puncture resistance (‘128, column 4, lines 10-15).

Conclusion

10. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.


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Any inquiry concerning this communication should be directed to Sow-Fun Hon whose telephone number is (703)308-3265. The examiner can normally be reached Monday to Friday from 9:00 AM to 6:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Harold Pyon, can be reached on (703)308-4251. The fax phone number for the organization where this application or proceeding is assigned is (703)872-9311.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703)308-0661.

8H
12/28/07


HAROLD PYON
SUPERVISORY PATENT EXAMINER
1772

12/28/01